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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
Annual Assessment of the Status of)
Competition in the Markets for the)
Delivery of Video Programming)

CS Docket No. 99-230

REPLY COMMENTS OF DIRECTV, INC.

DIRECTV, Inc.¹ ("DIRECTV") hereby submits the following reply comments in response to selected issues raised by commenters in the above-captioned proceeding.

First, DIRECTV reiterates its concern that the program access law² must be enforced more aggressively in order to facilitate increased competition in the delivery of multichannel video programming. Many parties agree with DIRECTV that recent Cable Services Bureau decisions jeopardize the effectiveness of the program access law and the Commission's program access implementing rules.³ DIRECTV therefore urges the Commission to reconsider the Bureau's approach, which effectively exempts from the law any satellite cable programming that is migrated to a terrestrial mode of delivery.

¹ DIRECTV is a wholly owned subsidiary of DIRECTV Enterprises, Inc., a licensee in the DBS service and a wholly-owned subsidiary of Hughes Electronics Corporation.

² 47 U.S.C. § 548.

³ See, e.g., Comments of Ameritech New Media, Inc. ("Ameritech New Media") at 7-10; Comments of BellSouth Corporation, BellSouth Interactive Media Services, Inc., and BellSouth Wireless Cable, Inc. ("BellSouth") at 14-17; Comments of Echostar Satellite Corporation ("Echostar"), at 2-6; Comments of RCN Corporation ("RCN") at 18-22; Comments of the Wireless Communications Association International, Inc. ("WCA") at 5-11.

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Second, DIRECTV wishes to address the comments of the National Rural Telecommunications Cooperative (“NRTC”)⁴ with respect to the disputed availability to the NRTC of certain programming formerly offered to subscribers by United States Satellite Broadcasting Company, Inc. (“USSB”). It is inappropriate (as the NRTC concedes) for the substance of a private contractual dispute that is the subject of two lawsuits to be considered by the Commission in this proceeding when that dispute has no relevance to the substance of the Commission’s ultimate report on the status of MVPD competition. Rural subscribers will suffer no loss of access to DBS services or programming, regardless of the outcome of the NRTC matter. Any suggestion to the contrary by the NRTC is a political scare tactic intended merely to advance a litigation position. Thus, DIRECTV requests that the Commission disregard the NRTC comments on this issue.

I. EVASION OF THE PROGRAM ACCESS LAW

A substantial number of commenters share DIRECTV’s concern that recent decisions have encouraged the practice of “terrestrial evasion” of the law.⁵ In particular, many parties are concerned that increased consolidation and clustering in the cable industry, as exemplified by AT&T’s recent acquisition of Tele-Communications Inc. (“TCI”),⁶ and its proposed acquisition of MediaOne Group, Inc. (“MediaOne”),⁷ will increase the incentive and ability of vertically-

⁴ NRTC Comments, at 16.

⁵ *See supra* note 3.

⁶ In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee, *Memorandum Opinion and Order*, 14 FCC Rcd 3160 (1999).

⁷ In the Matter of MediaOne Group, Inc., Transferor, and AT&T Corp., Transferee, Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, for Transfer of Control of Licenses and Authorizations, CS Docket No. 99-251.

integrated cable operators to migrate programming to terrestrial methods of delivery in order to avoid the application of the program access law.⁸ DIRECTV reiterates this concern.

As DIRECTV pointed out last year in response to the Commission's Notice of Inquiry, "terrestrial evasion," coupled with a corresponding refusal to sell such programming to an entire class of MVPD competitors, falls squarely within the protective sweep of the program access law.⁹ The Cable Services Bureau nonetheless has undermined the program access law by refusing to apply it to satellite cable programming that was migrated to a terrestrial delivery mode specifically for the purpose of evading the law.¹⁰ Several commenters are as concerned as DIRECTV is that the Cable Bureau's unduly narrow interpretation of the law in these decisions has given cable operators a green light on "terrestrial evasion."¹¹ The Commission still has an

⁸ See, e.g., Comments of Ameritech New Media at 7; Comments of BellSouth at 10-11; Comments of the WCA at 5.

⁹ See Comments of DIRECTV, Inc., In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket No. 98-102, at 6-8.

¹⁰ See DIRECTV, Inc v. Comcast Corp., et al, DA 98-2151, *Memorandum Opinion and Order* (rel. Oct. 27, 1998) Application for Review pending; Echostar Communications Corp., v. Comcast Corp., et al, DA 99-235, *Memorandum Opinion and Order* (rel. Jan. 26, 1999).

¹¹ See, e.g., Comments of Ameritech New Media at 9 ("These complaints clearly demonstrate that terrestrial distribution of programming coupled with the use of exclusive agreements is no longer a theoretical concern, but a real and substantial threat to MVPD competition."); Comments of Bellsouth at 16 ("[T]here can be no denying that the Commission's decision in the DIRECTV/Comcast SportsNet case gives cable programmers a road map for avoiding their program access obligations via terrestrial migration."); Comments of Echostar at 4 ("The Bureau did not adequately explain why it could not find an unfair practice in Comcast's refusal to deal, and in Comcast's transparent attempt to evade the specific prohibition on discrimination by transmitting its programming terrestrially."); Comments of RCN Corporation ("RCN") at 20 ("The Bureau's narrow and mechanistic reading of [Section 628] of the Act in the *Comcast* proceedings illustrate yet another direction in which regulation itself has become a substantial barrier to the development of MVPD competition."); WCA Comments at 9 ("[T]he Bureau appeared to send a strong signal to cable MSOs that they are free to engage in terrestrial migration and thereby evade their program access obligations, in the

opportunity to act to ensure that DBS operators and other MVPDs are able to secure crucial programming from increasingly clustered and vertically-integrated cable incumbents.¹² DIRECTV therefore urges the Commission to reconsider its approach and deter the use of terrestrial evasion tactics by incumbent cable operators as insulation from the requirements of the program access law.

II. THE NRTC DISPUTE

In the wake of DIRECTV's recent acquisition of USSB,¹³ the NRTC alleges that DIRECTV has "wrongfully refused to allow NRTC to distribute HBO, Showtime, The Movie Channel and Cinemax in NRTC's service territory under a DBS Distribution Agreement with DIRECTV."¹⁴ DIRECTV of course disagrees with this assertion, and more importantly, with the implication that rural DBS subscribers may be suffering a loss of service as a result of the NRTC dispute. While DIRECTV believes that it is inappropriate in a Commission proceeding to elaborate upon a matter that is the subject of litigation, DIRECTV wishes simply to clarify the factual record with respect to the NRTC's allegations.

First, DIRECTV wishes to clarify that the NRTC, its members and affiliates,¹⁵ and most importantly, the DIRECTV customers in its territories continue to have access to HBO,

absence of a congressional directive eliminating the 'terrestrial delivery' loophole in the 1992 Cable Act.").

¹² DIRECTV's application for review of the Bureau decision in *DIRECTV, Inc. v. Comcast Corp.* remains pending before the Commission.

¹³ United States Satellite Broadcasting Co., Inc. and DIRECTV Enterprises, Inc., *Order and Authorization*, DA 99-633 (rel. April 1, 1999).

¹⁴ NRTC Comments, at 16.

¹⁵ One need only to look at the website of Golden Sky, an NRTC affiliate, to learn that the NRTC is indeed marketing these services.

Showtime, The Movie Channel and Cinemax. The dispute currently being litigated between the NRTC and DIRECTV focuses on whether the NRTC is a subdistributor or an agent for DIRECTV, and the split of the revenues derived from the services – it does *not* affect subscribers' fundamental ability to obtain access to them. Second, DIRECTV notes that the NRTC's competitive position is exactly the same as, or more likely, stronger than, it has been over the last five years when these services were distributed by USSB. Third, DIRECTV would point out that the NRTC has been given the choice of (1) participating in the acquisition of USSB by Hughes Electronics Corporation or (2) continuing the relationships that previously existed with USSB. The NRTC's choice has been to reject both options.

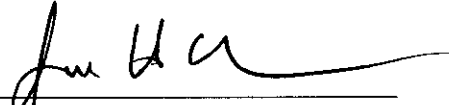
In the final analysis, the NRTC correctly recognizes that its dispute with DIRECTV is a "private contractual matter not generally requiring the Commission's intervention," and that it is beyond the scope of comments in this proceeding to review the merits of the arguments on each side. DIRECTV simply wishes the Commission to know that its rural subscribers have not suffered and will not suffer any loss of service or programming options, and indeed, that DIRECTV will continue to upgrade and broaden its services to such subscribers, regardless of the outcome of the NRTC dispute.

III. CONCLUSION

Many of the comments submitted by parties in this proceeding provide important information on the status of competition in the MVPD industry. In particular, an overwhelming number of commenters agree with DIRECTV that terrestrial evasion of the program access law has become a significant problem and that the Commission must act quickly to remedy it. Accordingly, DIRECTV urges the Commission to strengthen its enforcement of the program access law in order to support the continued emergence of competition in the MVPD industry.

Respectfully submitted,

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